

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**GEORGE W. ADLER and  
DEBRA ALDER, as TRUSTEES  
of the ALDER EMPLOYEES  
PENSION FUND,**

**Plaintiffs,**

**v.**

**B.C. ZIEGLER AND COMPANY,**

**Defendant,**

**and**

**BANK ONE TRUST COMPANY, N.A.,**

**Defendant and Third-Party Plaintiff**

**No. 01-C-1119**

**v.**

**ALDER GROUP, INC.,**

**Third-Party Defendant**

**MEMORANDUM AND ORDER**

**HERNDON, District Judge:**

Before the Court is a motion for attorneys' fees submitted by Third-Party Defendant the Alder Group ("Alder Group"). (Doc. 163.) The Court has dismissed Defendant Bank One's ("Bank One") third-party indemnification action against the Alder Group on the ground that no valid contract was entered into. (Doc. 197.) The Court based its reasoning on the lack of consideration supporting the

indemnification provision that the Alder Group ratified. (*Id.*; Tr. 731:4-732:5.)

The Alder Group requests attorneys' fees, arguing that it is presumptively entitled to those fees under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, **29 U.S.C. § 1001 et seq.** Bank One disagrees. Its position is that its indemnification action arose under Wisconsin state law, not ERISA, and thus attorneys' fees are improper.

The Court declines to award attorneys' fees here. Bank One's third-party indemnification suit, which this Court dismissed due to a lack of consideration and which does not itself implicate ERISA, does not entitle Alder Group to attorneys' fees. That suit did not require this Court to consider any ERISA issues. (*See* Doc. 197; Tr. 731:4-732.) It only required the Court to determine whether the Alder Group would be required to indemnify Bank One, under a purported indemnification agreement, in the event Bank One was found liable. Though attorneys' fees and costs are presumptively available under ERISA, *see* **29 U.S.C. § 1132(g)(1)**, Bank One's indemnification action was a state-law contract suit for which attorneys' fees are unavailable.

**IT IS SO ORDERED.**

Signed this 16th day of August, 2006.

/s/ David RHerndon  
**United States District Judge**